

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UBIQUITOUS CONNECTIVITY, LP,

Plaintiff,

v.

TXU ENERGY RETAIL COMPANY LLC,

Defendant.

CIVIL ACTION NO. 3:18-CV-02084-K

**DEFENDANT TXU ENERGY RETAIL COMPANY LLC'S UNOPPOSED
MOTION TO SET ASIDE CLERK'S ENTRY OF DEFAULT**

Defendant TXU Energy Retail Company LLC (“TXU”) files this Motion to Set Aside Clerk’s Entry of Default (“Motion”) on the basis that TXU has not been properly served with Plaintiff Ubiquitous Connectivity, LP’s (“Plaintiff” or “Ubiquitous”) Complaint [Dkt. No 1] in the above-captioned case. TXU further objects to Plaintiff’s Request for Entry of Default [Dkt. No. 11] and the Clerk’s Entry of Default [Dkt. No. 12] on the basis that attempted service on TXU was defective. Plaintiff did not serve TXU’s Registered Agent or otherwise properly serve TXU with process in this case. TXU respectfully requests that the Court set aside the Clerk’s Entry of Default [Dkt. No. 12] because attempted service on TXU was insufficient.

1. On August 10, 2018, Plaintiff filed its Complaint [Dkt. No 1] in this case.
2. Upon information and belief, Plaintiff attempted to serve TXU by serving CT Corporation System (“CT Corporation”) on September 11, 2018. [Dkt. No. 10].
3. On September 11, 2018, CT Corporation was not TXU’s Registered Agent for Service of Process. *See* Exhibit A, Affidavit of Cecily Gooch. On August 16, 2018, TXU filed a Statement of Change of Registered Office/Agent with the Texas Secretary of State—notifying the

public that TXU's Registered Agent changed to Capitol Corporate Services, Inc. ("Capitol Services"). *See id.* and Exhibits A-1 and A-2.

4. On November 14, 2018, TXU's counsel, Casey Moore, reached out to opposing counsel via email and telephone to attempt to resolve these issues without the Court's involvement and requested withdrawal of the Request for Entry of Default [Dkt. No. 11], but counsel were unable to confer before the Clerk filed its Entry of Default [Dkt. No. 12]. Counsel have now conferred regarding the issues raised in this Motion and have reached an agreement regarding Service of Process on TXU.

5. TXU respectfully requests that the Clerk's Entry of Default be set aside on the basis that TXU was not properly served.

Dated: November 14, 2018

Respectfully submitted,

TXU ENERGY RETAIL COMPANY LLC

By: /s/ Casey L. Moore
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ATTORNEY FOR DEFENDANT
TXU ENERGY RETAIL COMPANY LLC

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that on November 14, 2018 counsel for TXU conferred with Plaintiff's counsel and they are not opposed to the relief requested herein.

/s/ Casey L. Moore
Casey L. Moore

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on November 14, 2018, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

/s/ Casey L. Moore
Casey L. Moore